

REMARKS

The preceding amendments and following remarks form a full and complete response to the Office Action dated July 7, 2009. Applicant has amended the Specification to correct some minor typographical errors. No new matter was added. Support for the amendment to the Specification can be found, *inter alia*, in the Specification as filed and in Figure 6. Applicant has also added new claims 20-27. Support for the new claims can be found, *inter alia*, in claims 11-13 and at ¶¶ 29-40 of the Specification¹. No new matter was added by any of the new claims. Claims 1-10 were previously cancelled without prejudice or disclaimer. Accordingly, claims 11-27 are currently pending and are submitted for consideration.

Claim Rejections Under 35 U.S.C. § 102

The Examiner rejected claims 11-14, 16-17, and 19 under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,337,531 to Thompson et al. ("Thompson"). Applicant traverses the rejection on the basis that claims 11-14, 16-17 and 19 recite subject matter not disclosed by Thompson.

Independent claim 11 recites a beam attachment system. The beam attachment system comprises two posts, a beam, and at least one beam tie. The posts are stressed by the beam to push them apart and stressed by the beam tie to pull them together. The beam is connected to the beam tie, and the beam and the beam tie are mounted so that they can slide relative to each other according to a finite sliding portion.

Thompson discloses an adjustable camber truss. See Thompson at col. 1, lines 58-60. The adjustable camber truss comprises an upper chord member 12, a major king post 22, and a

¹ Unless otherwise noted, citations to the Specification refer to U.S. Patent Application Publication No. 2007/0028551, which was published on February 8, 2007.

pair of major tension members 28. *See Id.* at col. 3, lines 43-56; FIG. 1. The adjustable camber truss may also comprise a number of minor support structures 60, 62 fixed to a portion of the upper chord member 12 and each having tension members 72 and posts 64. *See Id.* at col. 4, lines 30-50; see also FIG. 3. The camber of the upper chord member of the truss may be adjusted by selectively adjusting the tension of each tension member 28. *Id.* at col. 3, line 56-col. 4, line 14; FIG. 2. The means for adjusting the tension members 28 comprises a threaded portion 40 of each tension member 20, a pair of hollow tubes fixed to the distal end 26 of the major king post 22 and nuts 50 and 51. *Id.* The camber of the upper chord member can be adjusted by tightening or loosening nuts 50. *Id.* A second pair of nuts 51 may be disposed on the threaded portion 40 to lock the tension members 28 in place once the required adjustments have been made with nuts 50. *Id.* Thompson, however, fails to disclose each and every element of claim 11.

For instance, Thompson fails to disclose a beam attachment system in which “the posts are stressed by the beam to push them apart and stressed by the beam tie to pull them together,” as required by claim 11. Since Thompson fails to disclose this feature of claim 11, the Examiner relies, instead, on a mere assertion that it would be inherent that wall 92 and its undisclosed counterpart wall would be stressed by the upper chord 12 to push them apart and stressed by tension members 28 to pull them together. *See Office Action at 2.* This inherency rests on the Examiner’s view that

any horizontal beam being placed between and in contact with two vertical beams exerts an outward, repelling force or stress to the vertical beams thus pushing them apart. The mere fact that there is a horizontal beam between two vertical beams within the reference justifies the examiners [sic] inherency grounds.

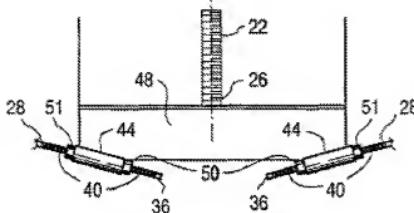
Office Action at 2-3. However, to establish inherency, the evidence must make clear that the missing descriptive matter is necessarily present in the thing described in the reference. *See, e.g.*, MPEP § 2112, paragraph IV. Furthermore, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *Id.* In this case, the Examiner has not established the inherency of the “posts [that] are stressed by the beam to push them apart and stressed by the beam tie to pull them together” in Thompson because this feature not necessarily present in Thompson. Indeed, a person of skill in the art would understand that the mere fact that a chord 12 is positioned between the walls, would not necessarily result in the walls being stressed apart from each other. Accordingly, because Thompson fails to disclose a beam attachment system in which “the posts are stressed by the beam to push them apart and stressed by the beam tie to pull them together,” as required by claim 11, the rejection of claim 11 is improper and should be withdrawn for this reason alone.

Claim 11, however, is patentable over Thompson for the separate and independent reason that, as noted previously, Thompson fails to disclose a beam attachment system where the beam and the beam tie are mounted sliding relative to each other according to a finite sliding portion, as claim 11 requires. The Examiner suggests that because the Thompson states that “tubes 44 are welded to plate 48 in position to slidably receive second ends of tension member 28,” that Thompson discloses this feature of claim 11. Applicant disagrees.

Thompson’s disclosure of tubes that “slidably receive” ends of the tension member 28 is entirely different from a beam and beam tie mounted sliding relative to each other according to a finite sliding portion, as required by claim 1. In Thompson, the tubes 44 slidably receive the

ends 36 of tension members 28, which are then secured with nuts 50. See Thompson at col. 3, line 67 – col. 4, line 9; FIG. 2 (reproduced below).

FIG. 2

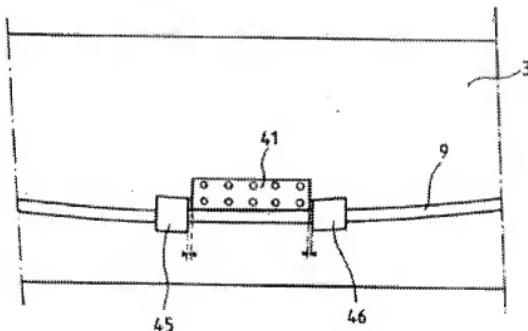


Nuts 50 permit adjustment of the tension on tension members 28. *Id.* Once adjustments to the tension members are complete, second nuts 51 can be used to lock the tension members 28 in place. *Id.* at col. 4, lines 10 – 15. Stated another way, once the tension in the tension members is adjusted, the tension members are secured with nuts 50 and 51 and no sliding can occur. That the tension may subsequently be adjusted does not change the fact that the tube 44 and tension member 28 are not mounted so that they can slide relative to each other. Instead, they are mounted so that no sliding occurs at all. Thus, Thompson fails to disclose a beam and beam tie that are mounted sliding relative to each other, as required by claim 11. Consequently, the rejection of claim 11 is improper and should be withdrawn for this separate and independent reason.

Assuming, for the sake of argument, that tube 44 and tension member 28 could still slide relative to one another once the tension members 28 were locked in place by the nuts 50 and 51, Thompson would still fail to disclose a “beam and beam tie [that] are mounted sliding

relative to each other according to a finite sliding portion.” At best, if the Examiner’s assertions were true (which they are not), the Examiner would have established that the beam tie can slide relative to the tube 44, not to a beam, as required by claim 11. This is because the Examiner equates the upper chord member 12 with the beam of the present invention not the tube. Nothing about the fact that the tubes 44 can “slidably receive” the second ends 36 of the tension members 28 has any bearing on whether the beam and the beam tie are mounted sliding relative to each other. Thus, even if the Examiner’s statements were true, Thompson would still fail to disclose a beam and beam tie mounted sliding relative to each other, as required by claim 11. The rejection of claim 11 is, therefore, improper and should be withdrawn for this separate and independent reason.

Furthermore, Thompson entirely fails to disclose a beam and beam tie mounted sliding relative to each other according to a finite sliding portion, as required by claim 11. The finite sliding portion of the present invention is described with reference to FIG. 6 of the specification, which is reproduced below.

FIG. 6

As shown in FIG. 6, the central beam 3 comprises two lateral parts joined by a central distribution plate 41. See Specification at ¶ 40. The beam 3 and the beam tie 9 are mounted sliding relative to each other according to a finite sliding portion. *Id.* This sliding portion is delimited by two sleeves 45 and 46, which are fixed onto the beam tie 9. *Id.* The difference between the finite sliding portion and the length of the distribution plate defines a sliding play, which allows the central distribution plate to slide along the beam tie and between the sleeves. *Id.* Thus, as can be seen from Figure 6 and the accompanying description, the beam, which is held together by the central distribution plate 41 is free to slide on a finite sliding portion of beam tie 9, which is defined by the sleeves 45 and 46. Thompson simply discloses no such finite sliding portion. The rejection of claim 11 is, therefore, improper for this separate and independent reason.

Since Thompson fails to disclose each and every feature of claim 11, Applicants respectfully request withdrawal of the rejection of claim 1. Claims 12-14, 16-17, and 19 depend from claim 11 and are patentable for at least the same reasons stated above with respect to claim 11. Applicant, therefore, respectfully requests the withdrawal of the rejection of claims 12-14, 16-17, and 19.

In addition to being patentable as depending from claim 11, claim 12 is patentable for the separate and independent reason that Thompson fails to disclose sleeves mounted on a beam tie that delimit a finite sliding portion. The Examiner alleges that nuts 50 delimit a finite sliding portion. *See* Office Action at 3. Applicants disagree.

As noted above, nuts 50 are used to adjust the tension on the tension members 28 and are used in conjunction with second nuts to lock the tension members 20 in place once the required adjustments have been made. Thus, contrary to the Examiner's assertions, the nuts do not delimit a finite sliding portion, but actually prevent any sliding from occurring at all. Accordingly, the rejection of claim 12 is improper for this additional reason. Applicant, therefore, respectfully requests the withdrawal of the rejection of claim 12 for this additional reason.

In addition to being patentable as dependent from claim 11, claim 13 is patentable for the separate and independent reason that Thompson fails to disclose a beam that comprises at least two lateral parts between which a beam tie passage is formed. The Examiner alleges that this feature is taught by Thompson because Figure 4 illustrates "that the beam tie passes through the beam to be attached via the bolt, to post (92)." Applicant submits that this is a slight misstatement of what Figure 4 shows. At best, Figure 4 merely shows that the first ends of tension members 28 and 72 can be welded to the end plate 88. *See, e.g.*, col. 5, lines 29-33.

Nowhere in Figure 4 (or in the rest of Thompson) are the features of claim 13 described. Indeed, the Examiner has pointed to no specific portion of Figure 4 or the accompanying discussion that discloses a “beam comprising at least two lateral parts between which a beam tie passage is formed.” Accordingly, the rejection of claim 13 is improper for this additional reason. Applicant, therefore, respectfully requests the withdrawal of the rejection of claim 13.

Claim Rejections Under 35 U.S.C. § 103

Claim 18

The Examiner rejected claim 18 is rejected under 35 U.S.C. § 103(a) as unpatentable over Thompson. Applicant traverses the rejection because claim 18 recites subject matter neither disclosed nor suggested by Thompson. For instance, claim 18, which depends from claim 11, is patentable over Thompson for at least the same reasons stated above with respect to claim 11: Thompson fails to disclose or suggest a beam attachment system where the beam and the beam tie are mounted sliding relative to each other according to a finite sliding portion, as claim 11 requires. Applicant, therefore, respectfully requests the withdrawal of the rejection of claim 18.

Claim 15

The Examiner rejected claim 15 under 35 U.S.C. § 103(a) as unpatentable over Thompson in view of U.S. Patent No. 4,353,190 to Gleeson (“Gleeson”). Applicant traverses the rejection on the basis that claim 15 recites subject matter neither disclosed nor suggested by the combination of Thompson and Gleeson. For instance, claim 15 is patentable over Thompson for the same reasons stated above with respect to claim 11, from which it depends. Gleeson, which the Examiner cites for its disclosure of a beam in several segments, fails to remedy the

deficiencies of Thompson with respect to claim 15. Namely, like Thompson, Gleeson fails to disclose or suggest a beam attachment system where the beam and the beam tie are mounted sliding relative to each other according to a finite sliding portion, as claim 11 (and therefore claim 15) requires. Applicant, therefore, respectfully requests the withdrawal of the rejection of claim 15.

New Claims

Applicant has amended the claims to include new claims 20-27. Independent claims 20 and 24 incorporates features from claims 11-13 and are patentable for at least the same reasons stated above with respect to these claims. Claims 21-23 and 25-27 depend from claims 20 and 24, respectively, and are patentable for at least the same reasons as claims 20 and 24 as well as for the additional features they recite. Applicant, therefore, respectfully requests the allowance of claims 20-27.

CONCLUSION

In view of the above, all objections and rejections have been sufficiently addressed.

Applicants submit that the application is now in condition for allowance and request that the Office allow claims 11-27 and pass this application to issue.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, the Applicants' undersigned attorney at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

As noted earlier, Applicants respectfully petition for a three (3) month extension of time.

Any fees for such an extension together with any additional fees may be charged to Counsel's

Respectfully submitted,

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